

1 KRISTIN K. MAYES
2 Attorney General of Arizona
3 (Firm State Bar No. 14000)
4 Alyse Meislik (AZ Bar 024052)
5 Dylan Jones (AZ Bar No. 034185)
6 Office of the Arizona Attorney General
7 2005 North Central Avenue
8 Phoenix, AZ 85004
9 Phone: (602) 542-3725
10 Fax: (602) 542-4377
11 consumer@azag.gov
12 *Lead Counsel for Plaintiffs*

13
14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE DISTRICT OF ARIZONA**
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17 State of Arizona, *ex rel.* Kristin K. Mayes,
18 Attorney General, *et al.*,
19 Plaintiffs,
20 v.
21 Michael D. Lansky, L.L.C., dba Avid
22 Telecom; et al.,
23 Defendants.

No.: CV-23-00233-TUC-CKJ

**PARTIES' CORRECTED
SUPPLEMENTAL JOINT
RULE 26(f) REPORT**

24 Pursuant to this Court's August 22, 2024 Order [Dkt 84], Plaintiffs and Defendants
25 (the "Parties") submit the following Supplemental Joint Rule 26 Report case management
26 plan supplementing the Parties' Joint Rule 26 Report and Discovery Plan [Dkt 79] outlining
27 the Plaintiffs' intended discovery, its necessary scope and time constraints.

28 The Lead Plaintiff States in this matter are the States of Arizona, Indiana, North
29 Carolina, and Ohio. Counsel for the Lead Plaintiff States represent the position of all Plaintiff
30 States.

I. NATURE OF THE CASE AND BASES OF CLAIMS

Plaintiffs filed this action against Michael D. Lansky, L.L.C., dba Avid Telecom (Defendant Avid Telecom), Michael D. Lansky, individually and as Chief Executive Officer (Defendant Lansky), and Stacey Reeves, individually and as Vice President of Operations and Sales, (collectively “Defendants”). All Plaintiffs joined Counts I through V of the Complaint, which alleged violations of the Telemarketing Sales Rule (“TSR”), 16 C.F.R. § 310 *et seq.*; the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.* and its implementing rule, 47 C.F.R. § 64.1200; and the Truth in Caller ID Act (“TCIA”), 47 U.S.C. § 227(e) and its implementing rule, 47 C.F.R. § 64.1604. Eleven Plaintiffs alleged violations of certain state laws that protect consumers against unfair and deceptive trade practices, including unfair, deceptive, abusive and illegal telemarketing practices.

The Parties previously outlined the nature of the case, the specific counts and the elements of proof for each count in the Parties’ Joint Rule 26(f) Report [Dkt 79, 79-1, 79-2], as well as in Plaintiffs’ Case Management Plan [Dkt 89] and Defendants’ Case Management Plan [Dkt 96].

II. PARTIES’ PLANS FOR DISCOVERY

Plaintiffs described their plans for discovery in detail in Sections II and III of Plaintiffs’ Case Management Plan [Dkt 89].

Defendants described their plans for discovery in Section II of Defendants’ Case Management Plan [Dkt 96].

III. JOINT PROPOSED MODIFICATIONS TO DISCOVERY LIMITATIONS

Plaintiffs served their initial Fed. R. Civ. P. 26(a)(1) disclosures and filed the Notice of Initial Disclosure on September 6, 2024.

Defendants filed their Fed. R. Civ. P. 26(a)(1) disclosures on September 6, 2024. Plaintiffs notified Defendants on October 4, 2024 that Defendants’ initial disclosures failed to include disclosures required pursuant to Rule 26(1)(A)(ii) - providing “a copy—or a description by category and location—of all documents, electronically stored information,

1 and tangible things that the disclosing party has in its possession, custody, or control and
2 may use to support its claims or defenses, unless the use would be solely for impeachment.”
3 Plaintiffs followed up by email on October 17, October 25, and October 28 but did not
4 receive a response. On October 31, 2024, counsel for Defendants responded to Plaintiffs’
5 October 28 email stating that Defendants will provide supplemental disclosures on or before
6 Monday, November 3, 2024. On November 4, Defendants’ counsel sent a follow up email
7 indicating the revised initial disclosures would likely be provided by November 6.

8 The Parties discussed changes to the limitations on discovery imposed by Fed. R. Civ.
9 P. 26(b)(2) and were not able to reach an agreement as to the number of depositions.

10 **A.** Interrogatories: Neither party is requesting a modification to the number of
11 interrogatories allowed under Fed. R. Civ. 33 of 25 interrogatories per party. The Parties
12 agree that either may seek to expand or reduce the interrogatory limitations through later
13 stipulation of the Parties or by individual motion to the Court as necessary.

14 **B.** Depositions: The Parties propose a modification to Fed. Rule Civ. P. 30, but
15 do not agree on the modification.

16 ○ Plaintiffs propose 20 depositions per side. Plaintiffs have identified
17 anticipated depositions in Section IV(B) of Plaintiffs’ Case Management
18 Plan [Dkt 89].

19 ○ Defendants propose 40 fact depositions per side. Defendants provide that
20 18 of Defendants’ 40 depositions would be of Plaintiff States, the
21 remaining 22 would be taken up by customers, vendors, carriers, officials
22 at the Industry Traceback Group, the FCC, and various state regulatory and
23 law enforcement agencies. Defendants have identified anticipated
24 depositions in Section III(B)-(C) of Defendants’ Case Management Plan
25 [Dkt 95].

26 The Parties agree that either may seek to expand or reduce the deposition limitations through
27 later stipulation of the Parties or by individual motion to the Court as necessary.

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1 **C.** The Parties previously agreed to request the production of electronically stored
 2 information (“ESI”). The Parties agree that ESI should be produced in its native format in
 3 connection with individual discovery requests as set forth in Fed. R. Civ. P. 33 and 34, and
 4 that the Parties should confer as to any ESI that requires special consideration. The Parties
 5 shall meet and confer regarding any specific ESI needs and disputes before seeking
 6 involvement of the Court.

7 **D.** The Parties agree that two weeks following the Court’s entry of the Case
 8 Scheduling Order, the Parties shall submit a proposed protective order for the Court’s review
 9 setting forth procedures governing assertions of privilege or other applicable protection from
 10 disclosure. The Parties previously agreed to confer prior to bringing any attorney-client
 11 privilege, work product, or other discovery issues or disputes to the Court.

12 **E.** Except where noted below, the Parties agree to propose the following case
 13 schedule:

14 i. Initial disclosures required by Fed. R. Civ. P. 26(a)(1) were exchanged by
 15 the Parties on September 6, 2024 as described above.

16 ii. Addition of parties or amending complaint – 60 days following the entry
 17 of the Case Scheduling Order.

18 iii. Completion of discovery:

19 The Parties believe that, due to the voluminous facts and the complexity of
 20 the legal issues in the case as set out in their respective Case Management
 21 Plans [Dkts 89 and 94], more than 180 days will be needed for discovery.

22 ○ The Parties agree to the completion of discovery 11 months
 23 following the entry of the Case Scheduling Order.

24 iv. Disclosure of initial expert testimony and rebuttal expert testimony
 25 pursuant to Fed. R. Civ. P. 26(a)(2):

26 • Disclosure of initial expert testimony:

27 ○ The Parties agree to the disclosure of initial expert testimony
 28 9 months following the entry of the Case Scheduling Order;

- Expert discovery:
 - The Parties agree discovery is to be issued within 15 days of initial expert testimony.
 - Responses are due within 30 days of initial expert testimony.
 - Depositions are to be completed within 45 days of initial expert testimony.
- Disclosure of rebuttal expert testimony:
 - The Parties agree to 60 days following the disclosure of initial expert testimony.

v. Disclosure of witness list:

- The Parties agree to 21 days prior to trial.

vi. Filing dispositive motions:

- The Parties agree to 60 days after the close of discovery.

vii. Filing pre-trial statements:

- The Parties agree to 21 days before trial.

viii. Filing of settlement status report:

- The Parties agree to 21 days after the end of discovery.

F. Evidentiary Hearings: The Parties anticipate evidentiary hearings may be required, such as a hearing to exclude unqualified expert or scientific evidence under the *Daubert* standard or to admit certain categories of evidence. The Parties agree that evidentiary hearings, if necessary, should be requested by motion or otherwise set by subsequent order of this Court, and should be held sometime after expert reports are exchanged.

G. Trial Preparation:

- The Parties anticipate being ready for trial within 14-15 months after the entry of the Case Scheduling Order;
- The Plaintiffs' Position: Plaintiffs anticipate being ready for trial 60 days following the issuances of the Court's orders on dispositive motions.

- 1 ○ The Defendants' position: Defendants anticipate being ready for trial 90
- 2 days following the issuances of the Court's orders on dispositive motions.
- 3 ○ The Plaintiffs anticipate needing 20 trial days. If the Parties can agree to
- 4 stipulate to the authenticity of records produced by record custodians, and
- 5 to the admissibility of deposition designations for consumers and some
- 6 other witnesses, the Plaintiffs believe the estimated length of the trial can
- 7 be shortened to 10 to 12 days.
- 8 ○ Defendants anticipate needing 20 trial days.

9 Each party reserves the right to seek an extension of the trial date based on the progress of
10 discovery, including the cooperation of third-party witnesses.

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26
27
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RESPECTFULLY SUBMITTED this 4th day of November, 2024.

FOR THE STATE OF ARIZONA:

KRISTIN K. MAYES
Attorney General for the State of Arizona

Alyse Meislik
ALYSE MEISLIK
DYLAN JONES
Assistant Attorneys General
Attorneys for the State of Arizona

FOR THE STATE OF INDIANA:

TODD ROKITA
Attorney General for the State of Indiana

Douglas S. Swetnam
DOUGLAS S. SWETNAM
THOMAS L. MARTINDALE
Deputy Attorneys General
Attorneys for the State of Indiana

FOR THE STATE OF NORTH CAROLINA:

JOSHUA H. STEIN
Attorney General for the State of North Carolina

Tracy Nayer
TRACY NAYER
ASA C. EDWARDS IV
Special Deputy Attorneys General
DANIELLE WILBURN ALLEN
Assistant Attorney General
Attorneys for the State of North Carolina

FOR THE STATE OF OHIO:

DAVE YOST
Attorney General for the State of Ohio

Erin B. Leahy
ERIN B. LEAHY
Senior Assistant Attorney General
Attorney for the State of Ohio

Lead Counsel for Plaintiffs

1 **FOR DEFENDANTS MICHAEL D. LANSKY, L.L.C., DBA AVID TELECOM,**
2 **MICHAEL D. LANSKY AND STACEY REEVES:**

3 s/ Neil S. Ende (with permission)

4 Neil S. Ende

5 Technology Law Group, LLC

6 5335 Wisconsin Avenue, NW, Suite 440

7 Washington, DC 20015

8 nende@tlgdc.com

9 Phone: (202) 895-1707

10 Fax: (202) 478-5074

11 s/ Greg Taylor (with permission)

12 Greg Taylor

13 *(Pro Hac Vice forthcoming)*

14 Technology Law Group, LLC

15 5335 Wisconsin Avenue, NW, Suite 440

16 Washington, DC 20015

17 gtaylor@tlgdc.com

18 Phone: (202) 895-1707

19 Fax: (202) 478-5074

CERTIFICATE OF SERVICE

I hereby certify that on November 4th, 2024, I caused the foregoing **PARTIES' CORRECTED SUPPLEMENTAL JOINT RULE 26(f) REPORT** to be filed and served upon Defendants electronically via the Court's CM/ECF system to their counsel of record.

Erin B. Leahy
Erin B. Leahy
Attorney for Plaintiff
State of Ohio

LIST OF PLAINTIFFS' COUNSEL

Alyse Meislik (AZ No. 024052)
Dylan Jones (AZ Bar No. 034185)
Assistant Attorneys General
Arizona Attorney General's Office
2005 North Central Avenue
Phoenix, AZ 85004
Phone: (602) 542-3725
Fax: (602) 542-4377
consumer@azag.gov
alyse.meislik@azag.gov
Attorneys for Plaintiff State of Arizona

Douglas S. Swetnam (IN Bar No. 15860-49)
Thomas L. Martindale (IN Bar No. 29706-64)
Deputy Attorneys General
Office of the Indiana Attorney General
Todd Rokita
Indiana Govt. Center South, 5th Fl.
302 W. Washington St.
Indianapolis, IN 46204-2770
Phone: (317) 232-6294 (Swetnam)
(317) 232-7751 (Martindale)
Fax: (317) 232-7979
douglas.swetnam@atg.in.gov
thomas.martindale@atg.in.gov
Attorneys for Plaintiff State of Indiana

Tracy Nayer (NC Bar No. 36964)
Asa C. Edwards IV (NC Bar No. 46000)
Special Deputy Attorneys General
Danielle Wilburn Allen (NC Bar No. 58141)
Assistant Attorney General
North Carolina Department of Justice
Consumer Protection Division
P.O. Box 629
Raleigh, North Carolina 27602
Phone: (919) 716-6000
Fax: (919) 716-6050
tnayer@ncdoj.gov
aedwards@ncdoj.gov
dwilburnallen@ncdoj.gov
Attorneys for Plaintiff State of North Carolina

Erin B. Leahy (OH Bar No. 0069509)
Senior Assistant Attorney General
Office of Attorney General Dave Yost
30 East Broad Street, 14th Fl.
Columbus, OH 43215
Phone: (614) 752-4730
Fax: (866) 768-2648
Erin.Leahy@OhioAGO.gov
Attorney for Plaintiff State of Ohio

Lead Counsel for Plaintiffs

Lindsay D. Barton (AL Bar No. 1165-G00N)
 Robert D. Tambling (AL Bar No. 6026-N67R)
 Assistant Attorneys General
 Office of the Alabama Attorney General
 501 Washington Avenue
 Montgomery, Alabama 36130
 Phone: (334) 353-2609 (Barton)
 (334) 242-7445 (Tambling)
 Fax: (334) 353-8400
Lindsay.Barton@AlabamaAG.gov
Robert.Tambling@AlabamaAG.gov
Attorneys for Plaintiff State of Alabama

Amanda Wentz (AR Bar No. 2021066)
 Assistant Attorney General
 Office of Attorney General Tim Griffin
 323 Center St., Ste. 200
 Little Rock, AR 72201
 Phone: (501) 682-1178
 Fax: (501) 682-8118
Amanda.wentz@arkansasag.gov
Attorney for Plaintiff State of Arkansas

Nicklas A. Akers (CA Bar No. 211222)
 Senior Assistant Attorney General
 Bernard A. Eskandari (CA Bar No. 244395)
 Supervising Deputy Attorney General
 Timothy D. Lundgren (CA Bar No. 254596)
 Rosailda Perez (CA Bar No. 284646)
 Michelle Burkart (CA Bar No. 234121)
 Deputy Attorneys General
 Office of the California Attorney General
 300 S. Spring St., Suite 1702
 Los Angeles, CA 90013
 Phone: (415) 510-3364 (Akers)
 (213) 269-6348 (Eskandari)
 (213) 269-6355 (Lundgren)
 (213) 269-6612 (Perez)
 (213) 269-6357 (Burkart)
 Fax: (916) 731-2146
nicklas.akers@doj.ca.gov
bernard.eskandari@doj.ca.gov
timothy.lundgren@doj.ca.gov
rosailda.perez@doj.ca.gov
michelle.burkart@doj.ca.gov
Attorneys for Plaintiff People of the State of California

Michel Singer Nelson (CO Bar No. 19779)
 Assistant Attorney General II
 Colorado Office of the Attorney General
 Ralph L. Carr Judicial Building
 1300 Broadway, 10th Floor
 Denver, CO 80203
 Phone: (720) 508-6220
michel.singernelson@coag.gov
*Attorney for Plaintiff State of Colorado,
 ex rel. Philip J. Weiser, Attorney General*

1 Brendan T. Flynn (Fed. Bar No. ct04545,
 2 CT Bar No. 419935)
 3 Assistant Attorney General
 4 Office of the Connecticut Attorney
 5 General William Tong
 6 165 Capitol Avenue, Suite 4000
 7 Hartford, CT 06106
 8 Phone: (860) 808-5400
 9 Fax: (860) 808-5593
 10 <mailto:brendan.flynn@ct.gov>
 11 *Attorney for Plaintiff State of Connecticut*

12 Ryan Costa (DE Bar No. 5325)
 13 Deputy Attorney General
 14 Delaware Department of Justice
 15 820 N. French Street, 5th Floor
 16 Wilmington, DE 19801
 17 Phone: (302) 683-8811
 18 Fax: (302) 577-6499
 19 Ryan.costa@delaware.gov
 20 *Attorney for Plaintiff State of Delaware*

21 Adam Teitelbaum (DC Bar No. 1015715)
 22 Director, Office of Consumer Protection
 23 Assistant Attorney General
 24 D.C. Office of the Attorney General
 25 Office of Consumer Protection
 26 400 6th Street NW, 10th Floor
 27 Washington, DC 20001
 28 Phone: (202) 741-0764
Adam.Teitelbaum@dc.gov
Attorney for Plaintiff District of Columbia

Patrick Crotty (FL Bar No. 108541)
 Senior Assistant Attorney General
 Miles Vaughn (FL Bar No. 1032235)
 Assistant Attorney General
 Office of the Florida Attorney General
 Consumer Protection Division
 3507 E. Frontage Rd, Suite 325
 Tampa, FL 33607
 Phone: (813) 287-7950
 Fax: (813) 281-5515
patrick.crotty@myfloridalegal.com
miles.vaughn@myfloridalegal.com
*Attorneys for Plaintiff Ashley Moody,
 Attorney General of the State of Florida*

David A. Zisook (GA Bar No. 310104)
 Senior Assistant Attorney General
 Office of the Attorney General of the State
 of Georgia
 2 Martin Luther King Jr. Drive, SE, Ste.
 356
 Atlanta, GA 30334
 Phone: (404) 458-4294
 Fax: (404) 464-8212
dzisook@law.ga.gov
Attorney for Plaintiff State of Georgia

Christopher J.I. Leong (HI Bar No. 9662)
 Deputy Attorney General
 Hawaii Department of the Attorney
 General
 425 Queen Street
 Honolulu, HI 96813
 Phone: (808) 586-1180
 Fax: (808) 586-1205
christopher.ji.leong@hawaii.gov
Attorney for Plaintiff State of Hawaii

1 James J. Simeri (ID Bar No. 12332)
2 *(Pro Hac Vice motion forthcoming)*
3 Consumer Protection Division Chief
4 Idaho Attorney General's Office
5 P.O. Box 83720
6 Boise, ID 83720-0010
7 Phone: (208) 334-4114
8 james.simeri@ag.idaho.gov
9 *Attorney for Plaintiff State of Idaho*

10 Philip Heimlich (IL Bar No. 6286375)
11 Assistant Attorney General
12 Elizabeth Blackston (IL Bar No. 6228859)
13 Consumer Fraud Bureau Chief
14 Office of the Illinois Attorney General
15 500 S. Second Street
16 Springfield, IL 62791
17 Phone: (217) 782-4436
18 philip.heimlich@ilag.gov
19 elizabeth.blackston@ilag.gov
20 *Attorneys for Plaintiff People of the State*
21 *of Illinois*

22 Benjamin Bellus (IA Bar No. AT0000688)
23 William Pearson (IA Bar No. AT0012070)
24 Assistant Attorneys General
25 Office of the Iowa Attorney General
26 1305 E. Walnut St.
27 Des Moines, IA 50319
28 Phone: (515) 242-6536 (Bellus)
(515) 242-6773 (Pearson)
Fax: (515) 281-6771
Benjamin.Bellus@ag.iowa.gov
William.Pearson@ag.iowa.gov
Attorneys for Plaintiff State of Iowa

Nicholas C. Smith (KS Bar No. 29742)
Sarah M. Dietz (KS Bar No. 27457)
Assistant Attorneys General
Consumer Protection Section
Office of the Kansas Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, KS 66612
Phone: (785) 296-3751
Fax: (785) 291-3699

Nicholas.Smith@ag.ks.gov
sarah.dietz@ag.ks.gov
Attorneys for Plaintiff State of Kansas

Jacob P. Ford (KY Bar No. 95546)
Assistant Attorney General
Office of the Attorney General,
Commonwealth of Kentucky
1024 Capital Center Drive, Ste. 200
Frankfort, KY 40601
Phone: (502) 871-2044
jacobp.ford@ky.gov
Attorney for Plaintiff Commonwealth of
Kentucky

ZaTabia N. Williams (LA Bar No. 36933)
Assistant Attorney General
Office of the Attorney General Liz Murrill
1885 North Third St.
Baton Rouge, LA 70802
Phone: (225) 326-6164
Fax: (225) 326-6499
WilliamsZ@ag.louisiana.gov
Attorney for Plaintiff State of Louisiana

1 Brendan O’Neil (ME Bar No. 009900)
 2 Assistant Attorney General
 3 Office of the Maine Attorney General
 4 6 State House Station
 5 Augusta, ME 04333
 6 Phone: (207) 626-8800
 7 Fax: (207) 624-7730
 8 brendan.oneil@maine.gov
 9 *Attorney for Plaintiff State of Maine*

10 Philip Ziperman (Fed. Bar No. 12430)
 11 Deputy Counsel
 12 Office of the Attorney General
 13 200 St. Paul Place
 14 Baltimore, MD 21202
 15 Phone: (410) 576-6417
 16 Fax: (410) 576-6566
 17 pziperman@oag.state.md.us
 18 *Attorney for Plaintiff Maryland Office of*
 19 *the Attorney General*

20 Carol Guerrero (MA Bar No. 705419)
 21 Assistant Attorney General
 22 Massachusetts Office of the Attorney
 23 General
 24 One Ashburton Place, 18th Floor
 25 Boston, MA 02108
 26 Phone: (617) 963-2783
 27 Fax: (617) 727-5765
 28 <mailto:Carol.Guerrero@mass.gov>
Attorney for Plaintiff Commonwealth of
Massachusetts

Kathy P. Fitzgerald (MI Bar No. P31454)
 Michael S. Hill (MI Bar No. P73084)
 Assistant Attorneys General
 Michigan Department of Attorney General
 Corporate Oversight Division
 P.O. Box 30736
 Lansing, MI 48909
 Phone: (517) 335-7632
 Fax: (517) 335-6755
fitzgeraldk@michigan.gov
Hillm19@michigan.gov
Attorneys for Plaintiff People of the
State of Michigan

Bennett Hartz (MN Bar No. 0393136)
 Assistant Attorney General
 Office of the Minnesota Attorney General
 445 Minnesota Street, Suite 1200
 Saint Paul, MN 55404
 Phone: (651) 757-1235
bennett.hartz@ag.state.mn.us
Attorney for Plaintiff State of Minnesota,
by its Attorney General, Keith Ellison

James M. Rankin (MS Bar No. 102332)
 Jessica D. Jasper (MS Bar No. 106305)
(Pro Hac Vice motion forthcoming)
 Special Assistant Attorneys General
 Mississippi Attorney General’s Office
 P.O. Box 220
 Jackson, MS 39205
 Phone: (601) 359-4258 (Rankin)
 (601) 359-3800 (Jasper)
james.rankin@ago.ms.gov
jessica.jasper@ago.ms.gov
Attorneys for Plaintiff Lynn Fitch,
Attorney General State of Mississippi

1 Michael Schwalbert (MO Bar No. 63299)
 2 Assistant Attorney General
 3 Office of the Missouri Attorney General
 4 815 Olive Street, Suite 200
 5 St. Louis, MO 63101
 6 Phone: (314) 340-6816
 7 Fax: (314) 340-7891
michael.schwalbert@ago.mo.gov
Attorney for Plaintiff State of Missouri, ex.
rel. Andrew Bailey, Attorney General

8 Anna Schneider (MT Bar No. 13963)
 9 Special Assistant Attorney General, Senior
 10 Counsel
 11 Andrew Butler (MT Bar No. 53936812)
 12 Assistant Attorney General
 13 Montana Attorney General's Office
 14 Office of Consumer Protection
 15 555 Fuller Avenue
 16 Helena, MT 59601
 17 Phone: (406) 444-4500
Anna.schneider@mt.gov
Andrew.butler@mt.gov
Attorneys for Plaintiff State of Montana

18 Gary E. Brollier (NE Bar No. 19785)
 19 Assistant Attorney General
 20 Office of the Attorney General Michael T.
 21 Hilgers
 22 2115 State Capitol Building
 23 Consumer Protection Division
 24 Lincoln, NE 68509
 Phone: (402) 471-1279
 Fax: (402) 471-4725
gary.brollier@nebraska.gov
Attorney for Plaintiff State of Nebraska

Michelle C. Badorine (NV Bar No. 13206)
 Senior Deputy Attorney General
 Office of the Nevada Attorney General
 Bureau of Consumer Protection
 100 North Carson Street
 Carson City, NV 89701-4717
 Phone: (775) 684-1164
 Fax: (775) 684-1299
MBadorine@ag.nv.gov
Attorney for Plaintiff State of Nevada

Mary F. Stewart (NH Bar No. 10067)
 Assistant Attorney General
 New Hampshire Department of Justice
 Office of the Attorney General
 Consumer Protection and Antitrust Bureau
 33 Capitol St.
 Concord, NH 03301-6397
 Phone: (603) 271-1139
 Fax: (603) 271-2110
Mary.F.Stewart@doj.nh.gov
*Attorney for Plaintiff State of New
 Hampshire*

Deepta Janardhan (NJ Bar No.
 309022020)
 Jeffrey Koziar (NJ Bar No. 015131999)
 Deputy Attorneys General
 New Jersey Office of the Attorney General
 Division of Law
 124 Halsey Street
 Newark, NJ 07101
 Phone: (973) 648-7819
 Fax: (973) 648-4887
Deepta.Janardhan@law.njoag.gov
Jeff.koziar@law.njoag.gov
Attorneys for Plaintiff State of New Jersey

Julie Sakura (NM Bar No. 19253)
 Assistant Attorney General
 State of New Mexico Department of
 Justice
 408 Galisteo St.
 Santa Fe, New Mexico 87501
 Phone: (505) 859-8074
 Fax: (505) 490-4883
jsakura@nmdoj.gov
*Attorney for Plaintiff Raúl Torrez, New
 Mexico Attorney General*

Glenna Goldis (NY Bar No. 4868600)
 Assistant Attorney General
 Office of the New York State Attorney
 General
 28 Liberty Street
 New York, NY 10005
 Phone: (646) 856-3697
Glenna.goldis@ag.ny.gov
*Attorney for Plaintiff Office of the Attorney
 General of the State of New York*

Elin S. Alm (ND Bar No. 05924)
 Christopher Glenn Lindblad (ND Bar
 No. 06480)
 Assistant Attorneys General
 Office of North Dakota Attorney General
 Consumer Protection & Antitrust Division
 1720 Burlington Drive, Suite C
 Bismarck, ND 58504-7736
 Phone: (701) 328-5570
 Fax: (701) 328-5568
mailto:ealm@nd.gov
clindblad@nd.gov
*Attorneys for Plaintiff State of North
 Dakota*

Robert J. Carlson (OK Bar No. 19312)
 Assistant Attorney General
 Office of the Oklahoma Attorney General
 313 N.E. 21st St.
 Oklahoma City, OK 73105
 Phone: (918) 581-2384
 Fax: (405) 522-0085
Robert.Carlson@oag.ok.gov
*Attorney for Plaintiff State of Oklahoma ex
 rel. Attorney General Gentner Drummond*

Jordan M. Roberts (OR Bar No. 115010)
 Senior Assistant Attorney General
 Oregon Department of Justice
 Consumer Protection Division
 100 SW Market St.
 Portland, OR 97201
 Phone: (971) 673-1880
 Fax: (971) 673-1884
jordan.m.roberts@doj.state.or.us
Attorney for Plaintiff State of Oregon

Mark W Wolfe (PA Bar No. 327807)
 Deputy Attorney General
 Pennsylvania Office of Attorney General
 Strawberry Square, 15th Floor
 Harrisburg, PA 17120-0001
 Phone: (717) 772-3558
 Fax: (717) 705-3795
mwolfe@attorneygeneral.gov
*Attorney for Plaintiff Commonwealth of
 Pennsylvania by Attorney General
 Michelle A. Henry*

1 Stephen N. Provazza (RI Bar No. 10435)
 2 Special Assistant Attorney General
 3 Rhode Island Office of the Attorney
 4 General
 5 150 S. Main Street
 6 Providence, RI 02903
 7 Phone: (401) 274-4400, ext. 2476
 8 Fax: (401) 222-1766
 9 sprovazza@riag.ri.gov
 10 *Attorney for Plaintiff State of Rhode*
 11 *Island, by Attorney General Peter*
 12 *Neronha*

13 Kristin Simons (SC Bar No. 74004)
 14 Senior Assistant Attorney General
 15 Danielle Robertson (SC Bar No. 105846)
 16 Assistant Attorney General
 17 South Carolina Attorney General's Office
 18 P.O. Box 11549
 19 Columbia, SC 29211-1549
 20 Phone: (803) 734-6134 (Simons)
 21 (803) 734-8044 (Robertson)
 22 <mailto:ksimons@scag.gov>
 23 danirobertson@scag.gov
 24 *Attorneys for Plaintiff State of South*
 25 *Carolina*

26 Austin C. Ostiguy (TN Bar No. 040301)
 27 Tyler T. Corcoran (TN Bar No. 038887)
 28 Assistant Attorneys General
 Office of the Tennessee Attorney General
 P.O. Box 20207
 Nashville, TN 37202
 Phone: (615) 532-7271 (Ostiguy)
 (615) 770-1714 (Corcoran)
 Fax: (615) 532-2910
austin.ostiguy@ag.tn.gov
tyler.corcoran@ag.tn.gov
Attorneys for Plaintiff State of Tennessee

David Shatto (Fed. Bar No. 3725697; TX
 Bar No. 24104114)
 Assistant Attorney General
 Attorney General for the State of Texas
 Office of the Attorney General
 P.O. Box 12548 (MC-010)
 Austin, TX 78711
 Phone: (512) 463-2185
 Fax: (512) 473-9125
David.Shatto@oag.texas.gov
Attorney for Plaintiff State of Texas

Kevin McLean (UT Bar No. 16101)
 Assistant Attorney General
 Utah Attorney General's Office
 160 East 300 South, 5th Floor
 P.O. Box 140872
 Salt Lake City, UT 84114-0872
 Phone: (801) 366-0310
 Fax: (801) 366-0315
kmclean@agutah.gov
Attorney for Plaintiff Utah Division of
Consumer Protection

Jill Abrams (VT Bar No. 4944)
 (Pro Hac Vice motion forthcoming)
 Office of the Vermont Attorney General
 109 State Street
 Montpelier, VT 05609-1001
 Phone: (802) 828-3171
 Fax: (802) 304-1014
Jill.Abrams@vermont.gov
Attorney for Plaintiff State of Vermont

Geoffrey L. Ward (VA Bar No. 89818)
 Senior Assistant Attorney General
 Office of the Attorney General of Virginia
 202 N. Ninth St.
 Richmond, VA 23219
 Phone: (804) 371-0871
 Fax: (804) 786-0122
gward@oag.state.va.us
*Attorney for Plaintiff Commonwealth of
 Virginia, ex rel. Jason S. Miyares,
 Attorney General*

Alexandra Kory (WA Bar No. 49889)
 Mina Shahin (WA Bar No. 46661)
 Assistant Attorneys General
 Washington State Attorney General's
 Office
 800 Fifth Avenue, Suite 2000
 Seattle, WA 98104
 Phone: (206) 516-2997 (Kory)
 (206) 326-5485 (Shahin)
 Fax: (206) 464-6451
Alexandra.Kory@atg.wa.gov
Mina.Shahin@atg.wa.gov
Attorneys for Plaintiff State of Washington

Ashley T. Wentz (WV Bar No. 13486)
 Assistant Attorney General
 West Virginia Attorney General's Office
 Consumer Protection/Antitrust Division
 P.O. Box 1789
 Charleston, WV 25326
 Phone: (304) 558-8986
 Fax: (304) 558-0184
Ashley.T.Wentz@wvago.gov
*Attorney for Plaintiff State of West
 Virginia ex rel. Patrick Morrissey, Attorney
 General*

Gregory A. Myszkowski (WI Bar No.
 1050022)
 Assistant Attorney General
 Wisconsin Department of Justice
 P.O. Box 7857
 Madison, WI 53707-7857
 Phone: (608) 266-7656
 Fax: (608) 294-2907
myszkowskiga@doj.state.wi.us
Attorney for Plaintiff State of Wisconsin

Cameron W. Geeting (WY Bar No.
 7-5338)
(Pro Hac Vice motion forthcoming)
 Senior Assistant Attorney General
 Consumer Protection and Antitrust Unit
 Wyoming Office of the Attorney General
 2320 Capitol Avenue
 Cheyenne, Wyoming 82002
 Phone: (307) 777-3795
cameron.geeting1@wyo.gov
Attorney for Plaintiff State of Wyoming